

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2005-15-C

IN RE: )  
 )  
Generic Proceeding to Address the )  
Appropriate Rate Classification or Rate )  
Structure for Telephone Lines Located in )  
Elevators and for Telephone Lines Located )  
In Proximity to Swimming Pools )  
\_\_\_\_\_ )

**JOINT PROPOSED ORDER SUBMITTED BY  
BELLSOUTH TELECOMMUNICATIONS, INC.,  
HORRY TELEPHONE COOPERATIVE, THE SOUTH CAROLINA  
TELEPHONE COALITION, AND VERIZON SOUTH, INC.**

The issue before the Commission in this proceeding is the appropriate rate classification or rate structure for “those telephone lines required by regulation or code for safety or emergency use, such as telephone lines required to be located in elevators or in proximity to swimming pools.”<sup>1</sup> This issue originally arose when an individual member of the Bay Meadows Homeowners Association (“HOA”) filed a complaint with the Commission because Horry Telephone Cooperative, Inc. (“HTC”) charges business rates for lines that serve telephones in elevators and at the swimming pool at a

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<sup>1</sup> See Revised Notice of Filing and Hearing issued in this docket January 31, 2005. See also Order Holding Disposition in Abeyance and Creating Generic Docket, *In Re: Rufus Watson, Bay Meadows Homeowners Assn. v. Horry Telephone Cooperative*, Order No. 2004-466 in Docket No. 2003-221-C at p.7 (October 5, 2004) (“HTC Order”) (“A generic docket is established to address the appropriate rate classification or rate structure for telephone lines which are required by code or regulation for safety or emergency use, such as telephone lines located in elevators and in proximity to swimming pools.”).

condominium development located in HTC's service area.<sup>2</sup> After holding an evidentiary hearing in that docket, the Commission entered an order establishing the existing generic docket.<sup>3</sup>

The Commission received pre-filed testimony in this docket on March 23, 2005 and presided over a hearing on April 13, 2005. Only one party, Mr. Rufus S. Watson, Jr., asked the Commission to change the *status quo* and to rule that residential rates should apply to the types of lines addressed in this docket.<sup>4</sup> Every other witness who testified in this proceeding supported the *status quo* of applying business rates when homeowners associations like the one at issue in this docket purchase telephone lines at pools and elevators in the common areas of a condominium development. These witnesses testified on behalf of the Office of Regulatory Staff ("ORS"), Verizon South, Inc. ("Verizon"), HTC, the South Carolina Telephone Coalition ("SCTC"), United Telephone Co. of the Carolinas and Sprint Communications Co. (collectively "Sprint"), and BellSouth Telecommunications, Inc. ("BellSouth").

For the reasons set forth below, the Commission finds that business rates should continue to apply to the types of lines at issue in this docket.

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<sup>2</sup> See HTC Order at pp. 1-4.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> Mr. Watson is a resident of the condominium development, but he is not personally responsible for the telephone service at the pool and elevators in the development. Instead, the bill for those lines is in the name of the HOA. Mr. Watson is not on the HOA's board of directors, and neither the HOA itself, any of its directors, nor any other resident of the condominium development participated in this docket. See Tr. at p. 21, ll. 6-12; p. 22, ll. 21-22.

## I. FINDINGS OF FACT

1. The tariffs of the local exchange companies that participated in this proceeding generally provide that business rates apply when service is used for a business purpose.<sup>5</sup>

2. The local exchange companies that participated in this proceeding apply business rates to the types of lines at issue in this proceeding.<sup>6</sup>

3. Business rates apply for the types of lines at issue in this proceeding in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and Tennessee.<sup>7</sup>

4. The HOA is the only condominium development about which any evidence was submitted.

5. The HOA, and not any particular individual, is the entity that receives telephone service at the swimming pool and at the elevators in the condominium development.<sup>8</sup>

6. The HOA is organized as a non-profit corporation and, therefore, is a corporate business entity and not an individual.<sup>9</sup>

7. In its capacity as a corporate business entity, the HOA provides a variety of services to the residents of the condominium development. These services include

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<sup>5</sup> Testimony of BellSouth witness Carlos Morillo, Tr. at p. 120, l. 14 through p. 121, l. 11; Testimony of Verizon Witness Orville Fulp, Tr. at p. 61, l. 21 through p. 62, l. 18; Testimony of HTC/SCTC Witness Debby Brooks, Tr. at p. 76, l. 15 through p. 77, l. 9; Testimony of Sprint Witness John Mitus, Tr. at p. 102, l. 6 through p. 103, l. 22.

<sup>6</sup> Testimony of BellSouth witness Carlos Morillo, Tr. at p. 121, ll. 13-17; Testimony of Verizon Witness Orville Fulp, Tr. at p. 61, l. 21 through p. 62, l. 18; Testimony of HTC/SCTC Witness Debby Brooks, Tr. at p. 77, l. 11 through p. 78, l. 3; Testimony of Sprint Witness John Mitus, Tr. at p. 103, ll. 24-31.

<sup>7</sup> Tr. at p. 38, ll. 16-18. The Louisiana Commission did not respond to the ORS's survey. *Id.* at ll. 18-19.

<sup>8</sup> See HTC Order at 3; Tr. at p. 21., ll. 7-12.

<sup>9</sup> HTC Order at 3; Tr. at p. 21, ll. 23-24.

obtaining telephone lines for the pool and elevators, as well as obtaining insurance, sewer service, water service, electric service, and grounds-keeping service with regard to the common areas of the development.<sup>10</sup>

8. The HOA has hired a management agent that handles its affairs.<sup>11</sup>

9. In exchange for the services it provides, the HOA collects \$195 per month from each unit in the development.<sup>12</sup>

10. The HOA purchases one line at its pool and one line in each of seven elevators from HTC.<sup>13</sup>

11. These eight lines serve common areas, not any individual residence.<sup>14</sup>

12. The difference between HTC's residential rate that would apply to these eight lines if they were reclassified and its business rate that currently applies to these eight lines is approximately \$10 per line per month.<sup>15</sup>

13. The condominium development with which the HOA is associated consists of eight buildings with a total of ninety-six residential units.<sup>16</sup>

14. Reclassifying the lines at issue in this proceeding from business to residential would, depending on the local exchange carrier involved, either convert above-cost rates to below-cost rates or take rates that are already below cost and force them even further below cost.<sup>17</sup>

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<sup>10</sup> Tr. at p. 23, l. 25 through p. 24, l. 2; p. 27., ll. 11-21.

<sup>11</sup> Tr. at p. 25, l. 23 through p. 26., l. 1.

<sup>12</sup> Tr. at p. 27, ll. 11-14.

<sup>13</sup> Tr. at p. 23, ll. 3-11.

<sup>14</sup> Tr. at p. 23, l. 7; p. 26, ll.17-24.

<sup>15</sup> Tr. at p. 92, ll.19-23.

<sup>16</sup> Tr. at p. 14, ll.10-12.

<sup>17</sup> Testimony of ORS Witness James McDaniel, Tr. at p. 37, ll. 1-8; Testimony of Verizon Witness Orville D. Fulp, Tr. at p. 63, ll. 1-12; Testimony of HTC/SCTC Witness

## II. ANALYSIS AND CONCLUSIONS OF LAW

The Commission concludes that the HOA is a corporate business entity and not an individual. The Commission further concludes that residents of the condominium complex benefit from the fact that the HOA is an incorporated business entity. If the HOA is sued, for instance, it is the HOA's assets – and not the residents' individual assets – that would be subject to any judgment that might be entered against the HOA. Additionally, condominium homeowners associations that are organized as not-for-profit corporations enjoy the benefits conferred upon business organizations by the Chapter 11 bankruptcy laws.<sup>18</sup> In this docket, a resident of the complex, who enjoys the protection the business status of the HOA provides, is asking that the HOA be treated as a non-business when it purchases telephone service for the pool and elevators at the complex. The Commission finds that this request should be denied.

Moreover, as the Commission found above, the tariffs of the local exchange companies that participated in this proceeding generally provide that business rates apply when service is used for a business purpose. Associations like the HOA (which, as explained above, are corporate business entities) order telephone service in common areas like elevators and swimming pools for a business purpose. That business purpose is to enhance the safety and security of people in those common areas, regardless of whether these people are residents, guests, trade persons, or employees of a homeowners' association. Because these associations use these telephone lines to fulfill their legal,

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Debby Brooks, Tr. at p. 78, l. 5 through p. 79, l.10; Testimony of Sprint Witness John Mitus, Tr. at p. 104, ll. 1-22. The Orders the Commission has entered in the State USF docket (1997-239-C) demonstrate that BellSouth's residential rates also are priced below their cost.

<sup>18</sup> See, e.g., *In Re: SABTC Townhouse Ass'n*, 152 B.R. 1005 (Bkrtcy. M.D. Fl. 1993).

insurance and safety obligations -- not to provide residents with an alternate source of residential telephone service -- it is appropriate to charge business rates for these services. Moreover, the types of telephone lines at issue serve common areas, not any individual residence. Accordingly, the pool does not meet the applicable definition of a residential pool, and the elevators do not meet the applicable definition of a residential elevator.<sup>19</sup>

The Commission's decision that business rates should continue to apply to these lines is consistent with South Carolina court decisions. The South Carolina Court of Appeals, for instance, treats condominium owners' associations as business entities, holding that the business judgment rule applies to their decisions:

A court should be reluctant to question action taken *intra vires* by the governing board of a non-profit corporation. This is especially true where the action taken by the governing board of a non-profit corporation requires the board's business judgment. In such instances, the governing board is entitled to have the validity of its *intra vires* action tested by the "business judgment" rule. Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith.<sup>20</sup>

On appeal, the Supreme Court of South Carolina affirmed this decision.<sup>21</sup> Later, the Supreme Court considered the duty a developer owed to a condominium owners' association that "was responsible for maintaining all common areas within" a planned unit development.<sup>22</sup> In rendering its decision, the Supreme Court cited with approval an Illinois decision holding that a developer "had the duty not to hinder 'the ability of the

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<sup>19</sup> See S.C. Code Regs. §§61-51.A.43; 61-51.A.47; 61-51.C.12. See also S.C. Code Ann. §§41-16-30 through -40; S.C. Code Regs. §§71-5100.1; 71-5200.1; AMSE A17.1, §211.1(a)(2); 1986 Edition of ANSI A17.3, §3.11.1.

<sup>20</sup> *Dockside Ass'n v. Detyens*, 352 S.E.2d 714, 716 (S.C. Ct. App. 1987).

<sup>21</sup> See *Dockside Assoc. v. Detyens*, 362 S.E.2d 874 (S.C. 1987).

<sup>22</sup> *Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*, 562 S.E.2d 633, 636 (S.C. 2002).

[condominium owners' association] to continue the business for which it was developed.”<sup>23</sup> These South Carolina court decisions, which treat condominium owners' associations as business entities, support the *status quo* of applying business rates to the lines at issue in this docket.

Decisions of other State commissions and the practice in other Southeastern states further support the Commission's decision in this proceeding. In 1994, for instance, the Florida Public Service Commission entered a Final Order in a generic proceeding it opened to investigate the proper tariffing of telephone service for elevators and common areas within condominium and similar facilities.<sup>24</sup> The Florida Commission found “that [local exchange companies] should be allowed to continue applying business rates to telephones located in condominium elevators.”<sup>25</sup> The Florida Commission stated that while calls made with these telephones likely would be made primarily by condominium residents, “condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents,” including “meeting the requirement of installing a communications device in an elevator.”<sup>26</sup> The Florida Commission found that “[t]his is a business activity and business rates should apply to a switched telephone line,” and it further found that “condominium residents can receive residential rates in their units but an elevator is not a residential facility.”<sup>27</sup>

In 1990, the California Public Utilities Commission reached a similar conclusion in a

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<sup>23</sup> *Id.* at 637 (emphasis added).

<sup>24</sup> See Final Order, *In Re: Investigation into proper tariffing of telephone service for elevators and common areas within residential facilities*, Order No. PSC-94-1180-FOF-TL in Docket No. 920837-TL (September 27, 1994). Exhibit CRM-2 to Mr. Morillo's testimony is a copy of this decision.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

proceeding in which the owners' association of a condominium complained that a local exchange company charged business rates for telephone lines in an elevator that connected solely to an alarm company and could not be used for any other purpose.<sup>28</sup> The California Commission dismissed the Complaint, saying that "[e]levator emergency telephone service to an alarm company is a business usage."<sup>29</sup>

Additionally, ORS witness James McDaniel testified that the Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and Tennessee Commissions responded to an ORS survey.<sup>30</sup> Each of these seven Commissions indicated that business rates apply for the types of lines at issue in this matter in their respective states.<sup>31</sup>

Finally, sound policy considerations support the Commission's decision in this proceeding. Given the eight lines that are the subject of the HOA's concerns (one for the pool and seven for elevators), and given the ninety-six units at the development, reclassifying the lines at issue in this docket could possibly reduce each unit's \$195.00-per-month regime fee by approximately \$0.83 per month (\$80 per month ÷ 96 units). This is a reduction of less than one-half of one percent of the existing regime fee.

This negligible financial benefit to residents of a coastal condominium development is outweighed by the harm to the general public that would result if these lines were reclassified. As witnesses for the ORS, Verizon, HTC, the SCTC, and Sprint all noted during the hearing, reclassifying these lines on a generic basis would, depending

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<sup>28</sup> See Opinion, *St. Francis Gardens Owners Assoc. v. General Telephone Co.*, Decision No. 91-04-056 in Case No. 90-12-020 (December 10, 1990). Exhibit CRM-3 to Mr. Morillo's testimony is a copy of this decision.

<sup>29</sup> *Id.* at p.2, Finding of Fact No. 4.

<sup>30</sup> *Tr.* at p. 38, ll. 16-18. The Louisiana Commission did not respond to the ORS's survey. *Id.* at ll. 18-19.

<sup>31</sup> *Id.* at ll. 23-24.



on the local exchange carrier involved, either convert above-cost rates to below-cost rates or take rates that are already below cost and force them even further below cost.<sup>32</sup> Reclassifying the lines at issue in this proceeding would only exacerbate the numerous and contentious legal and policy issues that arise when a local exchange provider is required to provide a service at below-cost prices.

This negligible financial benefit to residents of condominium developments also would be outweighed by the significant operational and financial concerns facing local service providers. The evidence shows that most local exchange companies have no reason to (and thus do not) keep track of the number of lines that serve pools and elevators.<sup>33</sup> It stands to reason, however, that there are enough pools and elevators in the State that reclassifying these lines could have a significant adverse financial impact on local exchange companies in the aggregate – an impact that will have to be shouldered by other ratepayers either directly by way of rate increases or indirectly by way of funding additional withdrawals from the State USF.<sup>34</sup>

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<sup>32</sup> Testimony of ORS Witness James McDaniel, Tr. at p. 37, ll. 1-8; Testimony of Verizon Witness Orville D. Fulp, Tr. at p. 63, ll. 1-12; Testimony of HTC/SCTC Witness Debby Brooks, Tr. at p. 78, l. 5 through p. 79, l.10; Testimony of Sprint Witness John Mitus, Tr. at p. 104, ll. 1-22. The Orders the Commission has entered in the State USF docket (1997-239-C) demonstrate that BellSouth's residential rates also are priced below their cost.

<sup>33</sup> See Testimony of BellSouth Witness Carlos Morillo, Tr. at p. 127, ll. 12-14. See also Tr. at p. 72, ll. 11-17; p. 92, l. 19 through p. 93, l. 6; p. 107, l. 19 through p. 108, l. 5.

<sup>34</sup> See Tr. at p. 92, l. 25 through p. 93, l. 6 (HTC's witness testified that "the financial impact that where Bay Meadows may be a small part, the basis that we are by law required to provide services on a nondiscriminatory basis. We can't single out one aspect, so the financial impact would be substantial because there are a lot of other situations, lot of other pools and elevators within our county service area."). These concerns are further compounded when the potential domino effect of such a reclassification is considered. If an incorporated HOA that obtains insurance, sewer service, water service, electric service, and grounds-keeping service with regard to the common areas of a coastal condominium development is entitled to below-cost

### **III. CONCLUSION**

Based on the foregoing, it is hereby ordered that:

1. Telephone lines required by regulation or code for safety or emergency use, such as telephone lines required to be located in elevators or in proximity to swimming pools, are appropriately classified as business lines, and business rates apply to such lines.

2. This Order shall remain in full force and effect until further Order of the Commission.

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residential rates, other business concerns likely would request similar treatment for the same or similar reasons.

BY ORDER OF THE COMMISSION:

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Randy Mitchell, Chairman

ATTEST:

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G. O'Neal Hamilton, Vice-Chairman

(SEAL)

Respectfully submitted,

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